



Attorney Docket No. 041358-0342

AF
JFW

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Steven A. SUNSHINE et al.

Title: SYSTEM FOR MEASURING AND TESTING A PRODUCT USING
ARTIFICIAL OLFACTOMETRY AND ANALYTICAL DATA

Appl. No.: 09/802,354

Filing Date: 03/09/2001

Examiner: G. O'Connor

Art Unit: 3627

REPLY BRIEF UNDER 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Appellants stand by their Appeal Brief and all of the various distinctions listed therein. However, Appellants wish to respond to several arguments made in the Examiner's Answer dated June 18, 2007.

Independent claim 1 recites, *inter alia*, a system that recommends a consumer product selection across a network to a consumer, including: (1) a descriptor module that is configured to receive human descriptor trait (HDT) descriptor input regarding the plurality of descriptors of at least a sampled (i.e., actual or existing) consumer product from at least two independent consumers at two independent nodes, respectively, on the network; and (2) a third computing module, that determines for each of said plurality of consumer products a correlation between said at least two classes and each of said plurality of descriptors including the received HDT descriptor input. Neither of these two recited features is disclosed or suggested by the applied prior art.

Specifically, nowhere the does Kolawa teach or suggest independent consumers providing human descriptive trait (HDT) input regarding a sampled consumer product over a network. With respect to this feature, Kolawa teaches retailers providing "information about

potential products (i.e., not sampled or actual products) and services which may be recommended to the users of the system.” See col. 2, lines 2-6 of Kolawa. That is, Kolawa only teaches that retailers may provide information about *potential* products or services which may then be recommended to the users of the system. Therefore, there is absolutely no teaching of receiving input from independent consumers over a network on human descriptive traits of a sampled consumer product.

The Examiner’s Answer relies on official notice to cure this deficiency in Kolawa. The office action states that receiving feedbacks/reviews of products from customers is well known to those of ordinary skill in the art and hence official notice is taken of that fact. However, Appellants disagree that official notice can be taken of the feature missing in Kolawa that receiving input from(1) independent consumers over a network on (2) human descriptive traits of (3) a sampled consumer product in the context of the claimed recommendation system. If the examiner is to maintain this rejection, the examiner is respectfully requested to cite to a reference as required by MPEP §2144.03.

On page 7 of the Examiner’s Answer, it asserts that Appellants have not properly traversed the Examiner’s taking of Official Notice, whereby Appellants strongly disagree with this assertion. Namely, it is clear from the above two paragraphs, taken from Appellant’s Brief, that Appellants have strongly disagreed with the Examiner’s position concerning the taking of official notice concerning receiving input from(1) independent consumers over a network on (2) human descriptive traits of (3) a sampled consumer product in the context of the claimed recommendation system. Appellants also requested that the Examiner provide a reference to support his allegation of official notice, which was not forthcoming in the Examiner’s Answer. See also the detailed “Rebuttal of “Response to Arguments” comments made on page 6 of Appellant’s Brief, which fully argued against the Examiner’s taking of official notice. Therefore, Appellants have fully complied with MPEP §2144.03, and have traversed the Examiner’s taking of official notice.

While it is not contested that “receiving feedback/reviews of products from consumers is well known to those of ordinary skill in the art”, as stated on page 3 of the Examiner’s Answer, this statement falls well short of the Examiner later attempting to take official notice concerning receiving input from(1) independent consumers over a network on (2) human

descriptive traits of (3) a sampled consumer product in the context of the claimed recommendation system.

Also, as stated in the Appellant's Brief, Kolawa teaches a system in which user (or consumer) preference vector is developed and compared to a separately created product vector, and any feedback from the user refines the *user* preference vector. Updating the product vector directly based on HDT descriptor input from sampled consumer products is not taught or suggested by the user.

Thus, combining the taking of the official notice statement on page 3 of the Examiner's Answer with the teachings of Kozama, at best one would obtain updating a user preference vector based on inputs received by a consumer over a network on a potential product, whereby this falls well short of receiving input from independent consumers over a network on human descriptive traits of a sampled consumer product.

Note also the arguments made in Appellant's Brief concerning the impermissible change in the principle of operation of Kolawa when the official notice assertion made in the Examiner's Answer is attempted to be combined with Kolawa, whereby this provides further support for the fact that there is not sufficient motivation to combine Kolawa with the official notice taken in the Examiner's Answer.

Accordingly, even if there is sufficient motivation to combine the official notice assertion made on page 3 of the Examiner's Answer with the Kolama reference, which Appellant does not believe exists (as discussed in detail above), such a combination falls well short of the specific features recited in independent claim 1.

On page 6 of the Examiner's Answer, in the "Response to Arguments" section, it asserts that "the argument that Kolawa et al. do not disclose 'consumers' being the ones to post the human descriptive trait (HDT) input . . . is irrelevant for being non-responsive to the actual rejection." In response, Appellants are well aware that the Examiner has combined his taking of official notice with Kolawa, whereby Appellants strongly submit that: 1) the Examiner's taking of official notice in the manner made in the Examiner's Answer is improper, and 2) combining the Examiner's taking of official notice with Kolawa is improper since it would impermissibly change the operation of Kolawa, and 3) even if such a

combination could be made, it fails to teach all of the features recited in independent claim 1 (since only prospective products would be reviewed, and not sampled products).

On page 7 of the Examiner's Answer, in the "Response to Arguments" section, it asserts that "the knowledge generally available to one of ordinary skill in the art would include having the end users/customers post their evaluations/descriptions of the product, as other customers would tend to accept such opinions as having greater credibility for being less biased (i.e., not being the ones selling the product and profiting from the sales)." However, this assertion appears to be based on unwarranted hindsight reconstruction of the claimed invention, and furthermore it results in an impermissible change in the principle of operation of Kolawa.

CONCLUSION

In view of above, Appellants respectfully solicit the Honorable Board of Patent Appeals and Interferences to reverse the rejections of the pending claims and pass this application on to allowance.

Respectfully submitted,

Date August 16, 2007

FOLEY & LARDNER LLP

Customer Number: 22428

Telephone: (202) 672-5300

Facsimile: (202) 672-5399

By Phillip J. Articola

Phillip J. Articola

Registration No. 38,819

Attorney for Appellants